

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	ICC Docket No. 15-0512
	)	
Amendment of 83 Ill. Adm. Code 412	)	
and 83 Ill. Adm. Code 453	)	

**REPLY OF THE PEOPLE OF THE STATE OF ILLINOIS TO RESPONSES TO THE  
PEOPLE’S MOTION TO STRIKE**

The People of the State of Illinois (“AG” or “the People”), by Lisa Madigan, Attorney General of the State of Illinois, hereby file their Reply to Responses to the People’s Motion to Strike (“Motion”) offered with their Reply Brief on Exceptions on February 23, 2016 the above-captioned proceeding.

CES files its Response to the People’s Motion to Strike and asks that the Motion be denied. CES responds to the People’s claims that CES’s Brief on Exceptions unfairly and prejudicially included material that was not only irrelevant but to which neither the parties nor the Staff had a right to respond. Not only are CES’s citations an unfair attempt to raise a new issue that is utterly beyond the scope of this rulemaking, and raise it at the last minute in the exceptions stage, CES does so in a manner that does not even comport with the Commission’s rules of practice regarding the filing of exceptions.

The citations to which the People objected, specifically, references in CES’s Brief on Exceptions to the “2014 Illinois Study” and a presentation made to the Chicago Bar Association by former Commission Chairman Phillip O’Connor in May of 2015, both of which addressed the state of retail electric competition, included statements of fact, an improper submission at this

late date in the proceedings. Furthermore, their presentation was not made in accordance with the Commission rules that apply to this case. Part 200.830(e) of the Commission's rules of practice state:

Statements of fact in briefs on exception and replies to briefs on exception should be supported by citation to the record.

83 Ill. Adm. Code 200.830(e). No citations to the record in this proceeding appear in connection with the data in the material to which the People objected. Indeed, no citations to the record could appear since the material itself did not appear anywhere in the record to this case.

CES should know that by statute, exceptions are filed in response to the Administrative Law Judge's Proposed Order, which is to include "...a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record." 220 ILCS 5/10-111. The Proposed Order is to be served on all parties, who are entitled to "a reasonable opportunity to respond thereto." *Id.* Exceptions are intended to provide that reasonable opportunity to respond to the Proposed Order and Reply Exceptions are intended to address exceptions filed by other parties. The objectionable discussion in CES's filing served neither of these purposes. The citations did not qualify as exceptions to any specific findings or recommendations contained in the Proposed Order. Instead, they introduced substantive material and statements of fact that were irrelevant to the rulemaking itself.

CES states that the People had a right to respond to the objectionable material in their Reply Brief on Exceptions. CES Response at 3. CES's response misses the point. The fact is that the People did respond by moving that the subject material be stricken. Yet CES insists that the People passed by opportunities to respond, arguing that the People are wrong to claim that the references to the 2014 Illinois Study and Dr. O'Connor's May 14, 2015 presentation are brand new. CES Response at 3. CES states the 2014 Study and Dr. O'Connor's May 14, 2015

presentation “...were discussed directly or by reference in multiples rounds of Comments submitted by CES together with the National Energy Marketers Association (“NEM”) in this Notice of Inquiry (“NOI”) on Retail Electric Market Issues (ICC Docket No. 14-NOI-01), which was conducted by ORMD and gave rise to the instant proceeding.” CES Response at 3. This argument is presented to support the claim that the NOI presented the AG with the opportunity to respond to these analyses and the data on which their conclusions were based.

To suggest that the People should have exercised their right to respond to analyses presented for the first time in exceptions to a Proposed Order in the instant proceeding *through a response filed in another docket* is absurd. That CES would make this argument is not only incomprehensible, it is also premised on a misunderstanding of the Commission’s rules of practice. The rules of practice, upon which CES appears to rely in suggesting that Commission procedures afforded the AG a chance to respond to the new facts asserted, do not even apply to a Notice of Inquiry. Part 220.10(b) of the Commission’s administrative rules describes the applicability of its rules of practice to “practice and procedure in docketed proceedings,” but states they “do[es] not apply to informal proceedings and activities including but not limited to inquiries conducted pursuant to notices of inquiry.” 83 Ill.Adm.Code 220.10(b). Yet CES’s assertion, if accepted, amounts to a requirement that if one party makes a statement of fact in a proceeding to which the rules of practice do not apply, then that proceeding puts any other party on notice regarding those statements should they be introduced (even if for the first time following the issuance of a Proposed Order) in a case to which the rules of practice do apply.

CES’s citations represent an attempt to introduce a new issue outside the scope of this proceeding and then a further attempt to brief that non-issue outside of CES’ filed exceptions. CES did, in fact, present exceptions to the Proposed Order, along with the required proposed

language. But the reports which CES cited in its Introduction and to which the People objected were not presented as part of any exceptions to the Proposed Order, and were not accompanied by any proposed language, in violation of the Commission's rules. Part 200.830(b) states:

Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. When exception is taken or reply thereto is made as to a statement or finding of fact, a suggested replacement statement or finding must be incorporated. Exceptions and replies thereto may contain written arguments in support of the position taken by the party or Staff witnesses filing such exceptions or reply. When exceptions contain such written arguments in support of the position taken, the arguments and exceptions may be filed.

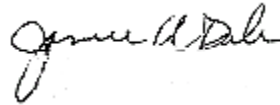
As the Response to the Motion filed by the Citizens Utility Board points out, CES's Brief on Exceptions also contains representations regarding customer savings in the competitive market by citing a report issued by the Commission's Office of Retail Market Development relating to the number of customers taking power from ARES and reports of residential customers' savings in the competitive market, and asks that those references be stricken: "Unverified claims of aggregate consumer savings have no place in this proceeding, the purpose of which is to strengthen protections for customers who directly contract with Retail Electric Suppliers ("RES").". CUB Response at 2. The People agree that CUB has pointed out a further instance in which CES's Brief on Exceptions has gone far beyond the scope of this rulemaking and ask that their Motion be amended to include CUB's specific request to strike the additional material cited on page 2 of its Response.

It is not fair to introduce new issues and new supporting evidence, including statements of fact, by including them for the first time in objections to the Administrative Law Judges' Proposed Order. The reports cited by CES, and the data included within those reports, to which the People objected and asked be stricken, are irrelevant to this rulemaking and did not constitute

exceptions to the Proposed Order. CES's references to those reports, and the statements of fact contained and cited therein, did not comport with the Commission's rules of practice and did not afford other parties an opportunity to properly respond as they were presented following the comment schedule adopted in this proceeding. Those references, as initially described in the People's Motion and as the Citizens Utility Board has moved be expanded to include additional material contained in CES's Brief on Exceptions, should be stricken from CES's Brief on Exceptions in this docket.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
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